

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN OLAGUES,

No. C 07-3918 JSW (PR)

Petitioner,

**SECOND ORDER OF DISMISSAL
WITH LEAVE TO AMEND AND
INSTRUCTIONS TO THE CLERK**

CHE TROQUILLE, Probation Officer,
Jefferson Parish, Louisiana,

Respondent.

Petitioner, a probationer in Louisiana after a conviction in Marin County, California, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction in the United States District Court for the Eastern District of Louisiana. The petition was transferred to this Court from the Eastern District of Louisiana. This Court previously granted leave to amend to name the proper Respondent, after Respondent named the Attorney General of Louisiana. Petitioner subsequently filed an amended petition, naming Che Troquille, Probation Officer of Jefferson Parish District, Louisiana, as the Respondent in this action. Respondent Troquille is now substituted as Respondent and the Clerk of Court is directed to TERMINATE the Louisiana Attorney General, Charles C. Foti, Jr., as a Respondent in this action.

Petitioner's amended petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases. Petitioner's amended petition is not on the Court's habeas corpus form. While Petitioner has now

1 properly alleged claims that his federal constitutional rights were violated in his state
2 court proceedings in California, he also states in the amended petition that he
3 "incorporates by reference the earlier pleadings and exhibits that were made in the
4 original Petition for Habeas Corpus." However, an amended complaint filed as a matter
5 of course or after leave of court supersedes the original complaint. "[A] plaintiff waives
6 all causes of action alleged in the original complaint which are not alleged in the amended
7 complaint." *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).
8 Petitioner must include in any amended complaint all pleadings and exhibits he wishes
9 the Court to consider in support of his claims, as the amended petition completely
10 replaces the original petition. Given that Petitioner apparently wishes to include certain
11 materials not made a part of the amended petition, it must be dismissed. However,
12 Petitioner will be given leave to amend to cure this defect.

13 CONCLUSION

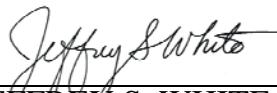
14 For the foregoing reasons and for good cause shown, this action is dismissed with
15 leave to file an amended petition within ***thirty days*** of the date of this order in which
16 Petitioner presents only claims for violations of his rights under the laws, treaties, or
17 Constitution of the United States. Each and every such claim must have been presented
18 to the California Supreme Court before it may be asserted in a federal habeas action. *See*
19 28 U.S.C. § 2254(b),(c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). The amended
20 petition must contain the caption and civil case number used in this order and the words
21 AMENDED PETITION on the first page. Failure to file an amended petition by the
22 deadline will result in dismissal of all claims in the petition, except claim three, which
23 alleges the violation of a federal right. Petitioner may wish to use the Court's form
24 habeas petition and must include a copy of all pleadings or exhibits he wishes the Court to
25 consider in support of his claims.

26 It is Petitioner's responsibility to prosecute this case. He must keep the Court
27 informed of any change of address by filing a separate paper with the clerk headed
28 "Notice of Change of Address." He must comply with any orders of the Court within the

1 time allowed, or ask for an extension of that time. Failure to do so may result in the
2 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
3 Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b)
4 applicable in habeas cases). The Court Clerk shall provide Petitioner with a copy of the
5 Court's form habeas corpus petition.

6 IT IS SO ORDERED.

7 DATED: May 1, 2009

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9 JEFFREY S. WHITE
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOHN OLAGUES,

Case Number: CV07-03918 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

CHARLES FOTI et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 4, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Olagues
413 Sauve Road
River Ridge, LA 70123

Dated: May 4, 2009

Jennifer Ottolini
Richard W. Wiking, Clerk
By: Jennifer Ottolini, Deputy Clerk

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk